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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 433

DANIEL ALTON WILLIAMS, *Petitioner*,

v.

EUGENE M. ZUCKERT, Secretary of the Air Force, *et al.*, *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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SUPPLEMENT TO PETITION FOR REHEARING

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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On February 15 and 16, 1963 petitioner's counsel received the affidavits annexed hereto as Exhibits B and C.

Exhibit B is an affidavit from Irving P. Andrews, Esq., the attorney who represented petitioner before the Civil Service Commission. In this affidavit, Mr. Andrews avers that the Air Force had notice of petitioner's request for the production of witnesses (Ex. A to Petition for Rehearing) and that prior to the hearing before the Appeals Examiner, Tenth Civil Service Region, Robert M. Sefranka, Investigator, U. S. Civil Service Commission, informed him "by

telephone that the demand for the production of witnesses had been rejected by Captain Roger P. Fox, Provost Marshal and spokesman for the Superintendent of the Air Force Academy * * *."

Exhibit C is an affidavit from Curtis L. Stevens, former Airman second-class, United States Air Force, and one of the three witnesses petitioner requested that the Air Force produce at the hearing before the Appeals Examiner, Tenth Civil Service Region (Petition for Rehearing, p. 6). In this affidavit, Mr. Stevens avers that he was informed by Captain Fox, Provost Marshal, Air Force Academy "that the Affidavit executed by me on April 24, 1959, would be adequate for the purposes of the hearing on May 5, 1959, and that my personal appearance there would not be necessary."

These affidavits refute the Solicitor General's post-argument representations made to this Court on December 13, 1962, and underscore the error of the summary disposition below (see Petition for Rehearing, p. 4).

CONCLUSION

By reason of the foregoing, the petition for rehearing should be granted, the judgment below should be reversed and the case remanded for a full hearing consistent with the opinion of this Court.

Respectfully submitted.

DAVID I. SHAPIRO
1411 K Street, N. W.
Washington 5, D. C.
Attorney for Petitioner

SIDNEY DICKSTEIN,
Of Counsel

EXHIBIT B

Affidavit

STATE OF COLORADO }
COUNTY OF DENVER } ss.

I, Irving P. Andrews, Attorney at Law, residing at 3451 E. 26th Avenue, Denver, Colorado, and being of lawful age, and first duly sworn upon my corporeal oath, depose and say:

That I am an attorney at law admitted to practice before the Supreme Court of the State of Colorado, and The U. S. District Court of Colorado and the 10th Court of Appeals; that in such capacity as an attorney I did represent the appellant, Daniel Alton Williams, in a hearing held before the Appeal Examiner for the 10th Civil Service Region, U. S. Civil Service Commission, on May 5, 1959, at Denver, Colorado, which hearing related to the dismissal of the appellant from his position at the United States Air Force Academy.

That affiant further states that on April 28, 1959, Mr. Robert M. Sefranka, Investigator, U. S. Civil Service Commission, was formally requested to convey, personally, the appellant's affidavit, requesting the appearance of certain witnesses named therein to appear before the Appeals Examiner, 10th Civil Service Region, to the appropriate officials of the Air Force Academy for the purpose of confrontation and cross-examination on May 5, 1959, at 9:00 o'clock A.M., at the Denver Federal Center, Denver, Colorado, at the hearing previously scheduled by the Appeals Examiner relating to the dismissal of the appellant.

That subsequent to April 28, 1959 and prior to May 5, 1959, the said Robert M. Sefranka, advised affiant by telephone that the demand for the production of witnesses had been rejected by Captain Roger P. Fox, Provost Marshal and spokesman for the Superintendent of the Air Force Academy, and Mrs. Josephine Dillon, spokesman for the Director of Civilian Personnel, Mr. James E. Dodson, had

similarly negatived the appellant's request for the production of the alleged government witnesses referred in Exhibit "A" and incorporated as an addendum to Petitioner's Petition For Rehearing.

That affiant further says that at the "hearing" of May 5, 1959, affiant at the inception of the proceedings inquiry was made of the Air Force Academy representative, Mrs. Josephine Dillon, as to the reason for the absence of the requested witnesses, and that the affiant was summarily informed by Mrs. Josephine Dillon, "that the Academy saw no need for their attendance at the hearing, and did not consider that their presence could add anything to the hearing".

That the affiant then replied, "that in other words the request which the appellant made for the appearance of Airmen Ryan, Stevens and Tyler was rejected", to which Mrs. Dillon answered affirmatively.

That at the earliest opportunity after being informed of the specific nature of the allegations directed against him and the identity of the witnesses on whom the government relied, appellant made written demand on the United States Air Force and Civil Service Personnel and caused the same to be delivered by an agent of the United States, Mr. Robert M. Sefranka, and that such demand and request for said witnesses was denied by the United States Air Force and the Civilian Personnel Director of the Air Force Academy.

Further, Affiant says not.

IRVING P. ANDREWS

Subscribed and sworn to before me this 14th day of February, 1963 by Irving P. Andrews.

ROBERT C. RHONE, JR.
Notary Public

(SEAL)

My commission expires October 7, 1964.

EXHIBIT C

Affidavit

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

I, Curtis L. Stevens, being duly sworn according to law, depose and say that I presently reside at 2634 Island Avenue, San Diego 2, California; that during the year 1959 I served as an Airman second-class in the United States Air Force and was assigned for duty at the United States Air Force Academy; that on April 24, 1959, I was summoned by the authorities at the Air Force Academy to a conference which I later learned was considered a preliminary investigation with reference to proceedings instituted at that time for dismissal of Daniel Alton Williams, a civilian employee at the Air Force Academy; that the following persons were present at that meeting: Josephine Dillon, Assistant Director of Civilian Personnel, Air Force Academy; Captain Roger P. Fox, Provost Marshal, Air Force Academy; and Robert M. Sefranka, Investigator, U. S. Civil Service Commission; that at said investigation, I was interrogated concerning my knowledge as to the charges made against Mr. Williams, and at the request of Mr. Sefranka, I signed an Affidavit summarizing a part of my testimony given in the presence of the three persons above named; that on or about the 29th day of April or immediately thereafter and before May 5, 1959, I was again summoned to a meeting or investigation before the Air Force Authorities; I was advised at the time by Captain Fox that the Affidavit executed by me on April 24, 1959, would be adequate for the purposes of the hearing on May 5, 1959, and that my personal appearance there would not be necessary. I remained at my usual duty assignment on May 5, 1959 and did not attend the hearing set on that day.

CURTIS L. STEVENS
Curtis L. Stevens